

Message Text

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14-11

ORIGIN EUR-12

INFO OCT-01 ISO-00 EB-07 ARA-10 L-02 TRSE-00 COME-00 AGR-10

/042 R

DRAFTED BY EUR/RPE:RDHARDING:CLJ

APPROVED BY EB/ITP:CWSCHMIDT

EB/OT/STA:MNAYOR

EUR/RPE:JTMCCARTHY

ARA/LA/CAR:GHIGH(SUBS)

L/ARA:DGANTZ

----- 000370

R 121948Z FEB 75

FM SECSTATE WASHDC

TO USMISSION EC BRUSSELS

AMEMBASSY BONN

INFO AMEMBASSY THE HAGUE

AMEMBASSY COPENHAGEN

AMEMBASSY BRUSSELS

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY LONDON

AMEMBASSY DUBLIN

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E.O. 11652: N/A

TAGS: ETRD, EEC

SUBJECT: COMPLAINTS AGAINST NEW PUERTO RICAN BEER BOTTLE
REGULATIONS

1. ON JANUARY 28, THE GERMAN EMBASSY AND EC DELEGATION
MADE REPRESENTATIONS TO DEPARTMENT CONCERNING A NEW REGULA-
TION ISSUED BY THE PUERTO RICAN TREASURY DEPARTMENT, EFFEC-
TIVE JANUARY 30, WHICH ESTABLISHES NEW SIZE AND OTHER
REQUIREMENTS FOR ALCOHOLIC BEVERAGE CONTAINERS. THEY
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ASSERTED THAT THE REGULATION WOULD MAKE IT VIRTUALLY

IMPOSSIBLE FOR THEIR BREWERIES TO CONTINUE EXPORTS TO PUERTO RICO. THE PUERTO RICAN AUTHORITIES SUBSEQUENTLY HAVE INDICATED THAT THERE IS LITTLE OR NO CHANCE OF RESCINDING OR DELAYING APPLICATION OF THIS REGULATION. ALTHOUGH LEGAL ASPECTS OF ISSUE ARE COMPLICATED, REGULATION APPEARS TO COVER AREA WHICH NO FEDERAL LAW PRE-EMPTS.

2. REGULATION PROVIDES THAT 90 DAYS AFTER IT BECOMES EFFECTIVE BEER MAY ONLY BE SOLD IN BARRELS, RETURNABLE BOTTLES WITH 7 AND 12 OUNCE STANDARDS OF FILL, AND 10 OUNCE CANS. BOTTLES MUST BE AMBER IN COLOR AND MEET SPECIFIC SHAPE AND LABELLING REQUIREMENTS.

3. DIRECTOR OF DEPARTMENT'S OFFICE OF INTERNATIONAL TRADE (CARL SCHMIDT) INFORMED SALVADOR CASELLAS, PUERTO RICAN SECRETARY OF THE TREASURY, BY TELEPHONE THAT STATE DEPARTMENT HAD RECEIVED DIPLOMATIC NOTES FROM FRG AND EC. SCHMIDT RELAYED THEIR CONCERNS ABOUT IMPACT OF NEW REQUIREMENT ON EXPORTS OF GERMAN, DANISH AND DUTCH BEER. SPECIFICALLY, HE NOTED GERMAN ASSERTIONS THAT AN ENTIRELY NEW TYPE OF BOTTLE WOULD HAVE TO BE PRODUCED; THE SMALLER CONTAINER WOULD MEAN HIGHER RATIO OF GLASS TO BEER AND THUS INCREASE SHIPPING COSTS; AND EVEN IF PRODUCERS WERE DISPOSED TO MAKE THE CHANGE, THE 90-DAY TRANSITION PERIOD WAS TOO SHORT.

4. CASELLAS REPLIED THAT REGULATION HAD BEEN UNDER CONSIDERATION SINCE EARLY 1974 AND THAT THREE DAYS OF PUBLIC HEARINGS WERE HELD IN DECEMBER AT WHICH TIME BEER DISTRIBUTORS HAD MADE THEIR VIEWS KNOWN. HE FELT THAT THE REGULATION WHICH WAS FINALLY APPROVED TOOK INTO CONSIDERATION THE VIEWS OF EVERYONE CONCERNED. HE EXPLAINED THAT THE MOTIVATIONS BEHIND THE REGULATION WERE THREEFOLD: 1) CONSUMER PROTECTION, 2) ENVIRONMENTAL PROTECTION, AND 3) FISCAL CONCERNS.

5. THE AUTHORITY TO ISSUE THE REGULATION, ACCORDING TO CASELLAS, IS WITHIN THE POLICE POWERS RESERVED TO THE COMMONWEALTH, AND UNDER THE 21ST AMENDMENT TO THE U.S. CONSTITUTION WHICH GRANTS POWER TO STATES TO REGULATE THE

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SALE OF ALCOHOLIC BEVERAGES. DEPARTMENT BELIEVES LITIGATION MAY BE ONLY MEANS OF DEFINITELY RESOLVING THE ISSUE. THE U.S. BREWERS ASSOCIATION HAS INDICATED THAT IT MAY GO TO FEDERAL COURT REQUESTING RELIEF BASED ON ARTICLE I, SEC. 8 OF THE CONSTITUTION (THE INTERSTATE COMMERCE CLAUSE) IN THAT THE REGULATION ACTS AS AN UNFAIR RESTRAINT ON COMMERCE. THE ASSOCIATION DOES NOT, HOWEVER, BELIEVE THAT IT HAS A STRONG POSITION.

6. WE REPORTED OUR FINDINGS TO EC AND GERMAN REPRESENTATIVES ON FEBRUARY 6 AND ENCOURAGED THEM TO DISCUSS ISSUE DIRECTLY WITH REPRESENTATIVES OF COMMONWEALTH OF PUERTO RICO IN WASHINGTON. THE GERMAN EMBASSY OFFICIAL INDICATED THAT HE WOULD CONSULT WITH GERMAN BEER REPRESENTATIVES REGARDING POSSIBLE FURTHER STEPS. THE DEPARTMENT WILL COMMUNICATE DIRECTLY TO CASELLAS THE REACTIONS AND FURTHER QUESTIONS OF THE EC AND GERMAN REPRESENTATIVES.

7. REGULATION AND OTHER MATERIALS BEING POUCHED TO POSTS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GLASS CONTAINERS, ALCOHOLIC BEVERAGES, EXPORT CONTROLS
Control Number: n/a
Copy: SINGLE
Draft Date: 12 FEB 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE032204
Document Source: CORE
Document Unique ID: 00
Drafter: RDHARDING:CLJ
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750052-0209
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750249/aaaabrst.tel
Line Count: 127
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 05 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <05 MAY 2003 by McShalBA>; APPROVED <23 JAN 2004 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COMPLAINTS AGAINST NEW PUERTO RICAN BEER BOTTLE REGULATIONS
TAGS: ETRD, RQ, EEC
To: EC BRUSSELS BONN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006